HIGH COURT OF DELHI : NEW DELHI

Date of decision: 5th September, 2007

W.P. (C) No. 12468/2005

Union of India & Ors. ...Petitioner
! Through: Ms. Punam Singh for Mr. Kumar Rajesh, Advocate

versus

$ Mathura Dutta & Others ...Respondents
^ Through: None for the Respondents

***CORAM:**

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J
:

1. The petitioner, UOI, by this petition under Article 226 of the Constitution of India challenge the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short `the Tribunal'), in O.A.No.1680/2004 and MA No.1421/2004, dated 15th July, 2004 and the order dated 22nd March, 2005 passed in C.P.No.506/2004. By the first order, the

Tribunal allowed the aforesaid OA, without issuing notice to the petitioner, by directing that the petitioner may give due consideration to the case of the respondent in the light of the decision of the Tribunal in O.A.89/2004, dated 14.1.2004, and to dispose of the claim of the respondent by passing a reasoned and speaking order within a period of two months. By the order dated 22nd March, 2005 passed in C.P.No.506/2004, the Tribunal gave a further direction to the petitioner to consider the claim of the respondent in the light of the orders passed in compliance of O.A.No.89/2004 dated 13.9.2004, by passing a detailed and speaking order within two months.

2. The respondent had preferred the aforesaid O.A No.1680/2004 before the Tribunal claiming arrears of pay for the period when they ought to have been made temporary, i.e after rendering continuous 120 days of casual labour, till the date they were in fact granted temporary status. Their submission was that, as per Railway Board's circular dated 30.6.1981, they were entitled to temporary status and privileges as per Chapter XXIII of the Indian Railway Establishment Manual (IREM) upon completion of 120 days of continuous service as casual labour. It was claimed that they had been initially appointed between the

years 1973 and 1984 and granted temporary status only the years 1979 to 1990. The relevant dates in respect of each of the respondent as given in para 4.3 of the O.A. The respondent's case was that in similar cases i.e. O.A.No.2610/02, ***Ram Dulare & Ors v. UOI &*** O.A.No. 1031/03, ***Shri Nand Kishore & Ors v. UOI & Ors.***, the Tribunal had allowed the same relief, and consequently they were also entitled to the said relief.

3. When the aforesaid OA of the respondents came up for preliminary hearing, the Tribunal, without notice to the petitioner allowed the same relying upon its earlier judgment and order dated 14th January, 2004 passed in O.A.No.89/2004, ***Shri Dhani Ram & Ors. v UOI & Others,*** with the following direction:-

> "Having regard to the facts as submitted by the applicants in this Original Application and also the specific submission made by the learned counsel for the applicants that the case is covered under the decision as given by this Tribunal in the above said O.A. I am of the view that the ends of justice will be met if the O.A is disposal of at the admission stage itself without issuing notice to the respondents with a direction that the reliefs as sought in this O.A. may be given due consideration in the light of the decision as relied upon by the applicant and as has been referred to hereinabove and to dispose it of by issuing a reasoned and speaking order within a period of

two months from the date of receipt of a copy of this order."

4. The petitioner sought extension of time for passing a reasoned order by filing M.A.Nos. 2065/2004 and 2066/2004, since it was claimed that the relevant documents were not available, and the respondent had also failed to file the same in support of their claim. On 11th October, 2004, the Tribunal granted further time of two months to implement the order dated 15th July, 2004.

5. The petitioner passed an order dated 18th January, 2005 rejecting the claim of the respondents for seeking temporary status and privileges as per Chapter XXIII of the IREM. The ground for rejection stated was that the respondents had been engaged in the years 1975-1984 as casual gangman/khalasi. No records, such as payment vouchers or attendance registers are now available in the office to verify the continuity of 120 days service and the same have been destroyed under prevalent office instructions. Even the respondents had not represented in the near past to consider their claim for grant of temporary status after 120 days of continuous service. In substance, the petitioner stated that there was no material available on record, and none had been

produced by the respondents to merit consideration of the claim made by the respondents. The petitioner also relied upon the judgment of the Supreme Court in ***Rattan Chandra Samanta v. UOI***, (1993) 3 SCC 671. In any event, the respondents were also called upon to furnish documents to substantiate their claim within 15 days.

6. The respondents thereafter initiated C.P.No.506/2004 which was opposed by the petitioners. The aforesaid contempt petition has been disposed of by the impugned order dated 22.3.2005 with the following direction:-

> "Accordingly, CP is disposed of with a direction to reconsider the claim of the applicants in the light of their orders passed in compliance of OA-89/2004 and 13.9.2004 by passing a detailed and speaking order within two months from the date of receipt of a copy of this order. Notice are discharged. However, it shall not preclude the applicants to revive this CP if they are still aggrieved."

7. The submissions of the Petitioners are as follows:

i) The Tribunal ought not to have disposed of the aforesaid O.A *ex parte* by issuing a direction to the petitioners to consider the claim of the respondents and pass a reasoned and detailed order by placing

reliance upon the order passed in O.A.No.89/2004 dated 14.1.2004. The Tribunal ought to have issued notice to the petitioners to grant an opportunity to the petitioners to satisfy the Tribunal that the case of the respondents was not similar in facts to the case in O.A.No.89/2004.

ii) The Tribunal in any event, merely directed the Petitioner to pass a reasoned and speaking order and that order stood complied with passing of the order by the Petitioner on 18.1.2005.

iii) The respondents had filed the aforesaid O.A after a lapse of over 20 years from the date they claim to have been initially engaged as casual workers. The same was highly belated.

iv) The Petitioner is not averse to the grant of arrears of pay from the date that the casual employees ought to have been given temporary status after they had worked for 120 days continuously. However, the said relief cannot be granted in the absence of any material or documentary proof. The Petitioners have no existing records since the claim

has been raised by the Respondents highly belatedly after about 20 years and the records are not maintained for more than five years in terms of office instruction No. PS-1666.

v) Moreover, the respondents failed to produce any documentary evidence or material to substantiate their claim, or to even enable the petitioner to verify the authenticity of the claim made by the respondents. The respondents, of their own had failed to provide any details about their alleged engagement on casual basis, such as the place of engagement, and the authority under whom they were initially engaged as casual labourers, and under whom they claimed to have completed 120 days of service in that capacity.

vi) The applicants of O.A. No. 89/2004 had given complete details of their being engaged as casual labourers and had also produced the relevant documents on the basis of which their claims were verified and found to be correct. It was on that basis that they had been given benefit in terms of para

2005 of the Railway Establishment Manual, Volume II.(This is so stated in the additional affidavit dated 29th August 2005, paragraph 4 and the Petitioner also produced a copy of the judgment and order passed by the Tribunal in O.A. No. 89/204 and MA No.86/2004 to show that in that case the complete details of the temporary employees were available).

vii)The only proof about the working period as casual labour after grant of temporary status is the payment voucher which is given to the concerned daily wager, and the copy of the attendance register. In the absence of these documents, it is impossible to ascertain, whether the claim is justified, and if so from which date the arrears are payable. Reliance is placed upon office instructions PS-1666, whereunder the specific records pertaining to the Respondents in the present case had already been destroyed. (This is so stated in the additional affidavit of the petitioner dated 14.2.2006)

viii)The Respondents are now taking advantage of the

aforesaid position and staking claims which could not be verified. The Petitioner also gave reference of other petitions stated to be pending before the Tribunal raising issues of limitation and jurisdiction in similar cases.

ix) The case of the Respondent is squarely covered by the judgment of the Hon'ble Supreme Court in the case of ***Ratan Chand Samanta*** (Supra) wherein similar circumstances, relief was denied to the Petitioners since they had failed to provide any proof of having worked as casual labourers continuously for a period of 120 days and the Supreme Court also refused to grant any further opportunity to them to produce the requisite proof.

x) The Petitioner had in any case, while passing the order dated 18.1.2005, granted further opportunity to the Respondents to come forward with the documentary proof, which they failed to avail of.

xi) The statement made by the Petitioners before the Tribunal that they would implement the order passed in the OA within two months while seeking

extension of time vide MA 2065 and 2066/2004 is in consonance with the stand of the Petitioners that they are not averse to granting relief to the Respondents, provided the same is duly established with documentary proof. The Respondents are taking undue advantage of the fact that there are no records available to verify their claims and the possibility of the said claims being incorrect or exaggerated cannot be ruled out.

8. Despite notice, there has been no appearance on behalf of Respondents. However, the stand of the Respondents, as contained in their OA before the Tribunal has been perused.

9. Having given our thoughtful consideration to the matter, we are of the view that the impugned orders of the Tribunal cannot be sustained in the face of the aforesaid decision of the Supreme Court in ***Ratan Chand Samanta*** (Supra) and in the facts of the present case.

10. In ***Ratan Chand Samanta*** (Supra) the casual employees were seeking re-employment without taking any steps to enforce their claim before the Railways, except sending

vague representations. They did not produce any material to satisfy the court that their case was covered by the scheme they sought to place reliance upon. From the date of retrenchment, more than 15 years had expired. The Court rejected the plea of the petitioners to permit the employees to produce documents to establish their claim after verification, on the ground that a writ is issued in favour of a person who has some right, and not for the sake of conducting a roving enquiry, leaving scope for maneuvering. The Court held that delay itself deprives a person of his remedy. In the absence of any fresh cause of action or any legislation, a person who has lost his remedy with lapse of time loses his right as well. The Court also held that in case the claim of the casual employees is accepted, a host of other such employees, who have in the meanwhile become eligible and are entitled to claim employment, would be deprived. In the absence of any positive material to establish their claim, the Supreme Court rejected the claim of the casual employees to require the Railways to now verify the correctness of the statement made by them that they were engaged on casual basis between 1964 to 1969 and retrenched between 1975 to 1978.

11. The admitted position is that the Respondents did not furnish any detailed particulars which can be verified to establish their claims. They did not file any documentary evidence to show that they had worked as casual labourers continuously for a period of 120 days. Their claims were made highly belated, inasmuch as, they were granted temporary status between the period 1979 and 1981 except in the case of Respondent No. 12 who was granted temporary status on 6.7.1990. They had claimed their initial dates of appointment between the years 1973 and 1984. A perusal of para 4.3 of the OA shows that in respect of some of the Respondents/applicants, the dates were vaguely mentioned, inasmuch as, only the month and the year when the initial appointments were claimed to have been made were mentioned. In respect of Shri Radhey Krishan, respondent no.8, only the year 1974 was mentioned and no further details were mentioned. There were absolutely no documentary proofs filed by the Respondent before the Tribunal. The Respondents also did not dispute the fact that the Petitioners were not possessed of any records which could be verified to establish their claims. Their only argument was that similar relief had been granted in other cases without insisting upon verifications of the record. That, in our view, is no reason to grant the same relief to

the Respondents. The Respondents must stand on their own legs and establish their right to claim the relief as claimed by them, and cannot rely upon the fact that others have been granted the same relief without verification of their claims. If others have been granted the same relief without verification of their service records, that was erroneous on the part of the Petitioner. However, no case for discrimination can be made out on the basis that some others have wrongly been granted the benefit or relief which was not due to them (See AIR 2006 SC 2609).

12. We are of the view that the Tribunal should be very careful while issuing ex parte final directions to the authorities, particularly where such directions are based on the assumption that the applicants case is covered by another judicial pronouncement of the Tribunal or the Court. Even if it appears to the Tribunal that a matter is covered by another decision, it would serve the interest of justice and be in consonance with the principles of natural justice to give a short notice to the respondents to place their stand before the Tribunal. After all, it is always open to a party to try and satisfy the Court that in the facts of his case, the earlier pronouncement is not applicable, or that, the said pronouncement is itself erroneous, being in conflict

with or in ignorance of a decision of the Higher Court or the law. In the present case, if the Tribunal had issued notice to the petitioners herein, they would have brought to the notice of the Tribunal the fact that the present case is on a different factual footing from the one decided in O.A 89/2004; that in the present case there are no records available, and none have been produced by the respondents to verify their claims; and, that the claim of the respondents as made were in the teeth of the decision of the Supreme Court in ***Rattan Chand Samanta*** (supra). It is quite likely, that if the Tribunal had the occasion to consider these submissions, the Tribunal may not even have issued the directions that it did by its ex parte impugned order.

13. We also find force in the submission of the Petitioner that the only direction issued by the Tribunal while disposing of the OA on 15.7.2004 was that the Petitioner should pass a speaking and reasoned order. That order was complied with. With the passing of the order dated 18.1.2005 by the Petitioner, in our view, the direction contained in the OA stood complied with and consequently no action for contempt could have been initiated against the Petitioner by the Tribunal. The submission made by the Petitioner while seeking extension of time for

compliance of the order passed in OA to the effect that the Respondents were considering the grant of benefits as prayed for in the OA cannot, by itself, vest a right for the Respondents to fasten liability upon the Petitioner. The said statement was merely to the effect that they were considering the grant of the benefit prayed for in the OA. That is not the same thing as to say that they had decided to grant the benefit to the respondents. The Petitioners were entitled to take a considered view on the claim made by the Respondents in accordance with law. This is exactly what the Petitioner did when the order dated 18.1.2005 was passed. If the Respondents were aggrieved by the order dated 18.1.2005, it was open to them to have initiated a fresh OA under Section 19 of the Administrative Tribunals Act. The stand of the Petitioner in the said communication was, to our mind, fair and reasonable. They expressed the inability to grant the relief claimed by the Respondent on account of non availability of the record to verify the extremely stale claim of the Respondents and supported their decision with the authoritative ruling of the Supreme Court aforesaid. Even in such circumstances, the Respondents were granted yet another opportunity to substantiate their claim by furnishing documentary proof to establish that they had worked as casual

labourer for 120 days continuously. In our view, the Tribunal fell in error in disregarding the fact that the Respondents were not in a position to substantiate their claims and consequently they were not entitled to any relief in view of the decision of the Supreme Court in ***Ratan Chand Samanta*** (Supra).

14. The respondents appear to have contended that the petitioner was estopped from denying their claim for arrears of pay. We do not see any force in this submission of the respondents. Firstly, that there is no estoppel against the law. Secondly, the respondents do not even say that the petitioners made a representation, which they accepted and acted upon and from which the petitioners have bactracked. Thirdly, the mere proposal of the General Manager, even if one is assumed to have been made by him, to waive the requirement of verification of records does not vest the respondents with an enforceable right. The petitioners, who are managing public wealth are bound to verify each and every claim made before them in larger public interest and cannot dole out largess, unless it is backed and authorised by law. If unverified claims are allowed to be entertained, large scale frauds and bogus claims are bound to errupt, which will eat into tax payers money.

15. In view of the aforesaid, we set aside the orders passed by the Tribunal in O.A. No. 1680/2004 MA No.1421/2004 dated 15th July 2004 and CP 506/2004 in OA 1680/2004 dated 22nd March 2005 and dismiss OA No.1680/2004 filed by the Respondents. Parties are left to bear their respective costs.

VIPIN SANGHI, J.

A.K. SIKRI, J.

September 05, 2007
as/P.K. BABBAR.